

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MARTY GELFAND
1419 West 9th Street
Cleveland, OH 44113

2013 SEP 13 A 10:59 CASE NO.

Judge: LANCE T MASON

CV 13 813758

Plaintiff-Petitioner,

vs.

VERIFIED COMPLAINT
FOR WRIT OF MANDAMUS

STATE OF OHIO
c/o Ohio Department of Transportation
5500 Transportation Boulevard
Garfield Heights, Ohio 44125

and

MYRON PAKUSH
Director, District 12
C/o Ohio Department of Transportation
5500 Transportation Boulevard
Garfield Heights, Ohio 44125

Defendants-Respondents,

1. Petitioner, Marty Gelfand, seeks a writ of mandamus to compel the Respondents to produce the public records requested in writing by the Petitioner, Marty Gelfand, on July 9, 2013, see Exhibit A attached.
2. Respondent, Ohio Department of Transportation (ODOT), is the state agency committed to planning, funding, and constructing roads in the State of Ohio.
3. Respondent, Ohio Department of Transportation (ODOT), is a public office pursuant to Ohio Revised Code § 149.43.
4. Respondent, Myron Pakush, at all times mentioned in this petition was employed as District Deputy Director of the 12th District by the Respondent, Ohio Department of Transportation (ODOT), responsible for compliance by the 12th District with Ohio Revised Code § 149.43, acting within the course and scope of his employment with Respondent, Ohio Department of Transportation (ODOT).

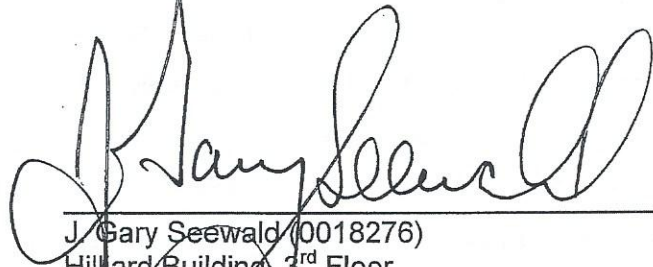
5. Petitioner, Marty Gelfand, is a resident and citizen of the State of Ohio, County of Cuyahoga and City of South Euclid and is therefore "party beneficially interested" in the planning, location and construction of public roads and highways within Cuyahoga County.
6. Petitioner, Marty Gelfand, is an "at large" City Councilman for the City of South Euclid representing approximately 22,000 constituents living in the City of South Euclid and is charged with the responsibilities attendant with that public position.
7. Respondent, Ohio Department of Transportation (ODOT), has been and is in the process of planning a road which it calls the "Opportunity Corridor" in the City of Cleveland, County of Cuyahoga, State of Ohio, connecting Interstate 490 with University Circle and the Cleveland Clinic on Cleveland's East Side.
8. Respondent, Ohio Department of Transportation (ODOT), directly or indirectly through the U.S. Department of Transportation, is the proponent agency with respect to compliance with the National Environmental Policy Act (NEPA), 42 U.S.C.A. § 4321 to § 4370 that outlines the administrative procedures for government agencies "in planning and in decision making which may have an impact on man's environment."
9. Respondent, Ohio Department of Transportation (ODOT), has compiled several options in the planning for the "Opportunity Corridor," including a "preferred alternative" and a Woodland Avenue alternative.
10. Respondent, Ohio Department of Transportation (ODOT), has estimated that the cost to the public for building the Opportunity Corridor is Three Hundred Twenty-Four Million and no/100 Dollars (\$324,000,000.00).
11. Petitioner, Marty Gelfand, as elected Councilman at-Large in the City of South Euclid, Ohio and as a resident and citizen is directly affected by the alterations to traffic, disruptions to commerce and quality of life and potential degradation of the environment, of proposed "Opportunity Corridor."
12. The Ohio Revised Code imposes a duty on Respondent, Ohio Department of Transportation (ODOT), to Petitioner, Marty Gelfand, the public and the people affected by its projects, to produce "all public records responsive to" a reasonable request in a prompt manner "and made available for inspection to any person at all reasonable times during regular business hours."
13. Petitioner, Marty Gelfand, wrote an article, "A Business Bypass would outshine Opportunity Corridor: letter to the editor," which first appeared online on June 7, 2013, and later was published in print on June 10, 2013, by the Cleveland Plain Dealer suggesting an alternative route for the "Opportunity Corridor" relying on the use of existing roadways, including Woodland Avenue, to make the connection between I-490 and University Circle.

14. On July 3, 2013, Petitioner, Marty Gelfand, met in Cuyahoga County with Respondent, Myron Pakush, Deputy Director of District 12, Ohio Department of Transportation (ODOT), about the alternatives studied in conjunction with its required NEPA environmental planning. At said time and place Respondent, Myron Pakush, informed Petitioner, Marty Gelfand about Respondent, Ohio Department of Transportation's (ODOT), study of a Woodland Avenue alternative and its rejection as a preferred alternative.
15. On July 9, 2013, Petitioner, Marty Gelfand, wrote to Respondent, Myron Pakush, requesting public records, see Exhibit A attached.
16. Petitioner, Marty Gelfand, in the July 9, 2013, letter attached herein as Exhibit A., requested a public record, as defined in ORC §149.011(G), of all comments and any analysis which led Respondent, Ohio Department of Transportation (ODOT), to its decisions related to the route of the proposed "Opportunity Corridor."
17. Respondent, Myron Pakush, wrote to Petitioner, Marty Gelfand, denying Petitioner, Marty Gelfand access to the information requested in the Petitioner, Marty Gelfand's, letter of July 9, 2013, on August 13, 2013, see attached Exhibit B.
18. Petitioner, Marty Gelfand, says Respondent, Myron Pakush's, failed to provide Petitioner, Marty Gelfand, with a lawful "explanation, including legal authority, setting forth why the request was denied."
19. Petitioner, Marty Gelfand, says Respondents' conduct did not serve some underlying public purpose of Ohio Revised Code § 149.43 or that Respondents' reasonably believed that they were complying with Ohio Revised Code § 149.43.
20. Petitioner, Marty Gelfand, says he has no adequate remedy at law.
21. Petitioner, Marty Gelfand, says as a direct and proximate result of Respondent, Myron Pakush's, refusal to comply with a lawful public records request Respondent, Myron Pakush, breached his duty pursuant to Ohio Revised Code § 149.43 to promptly prepare and make available for inspection to Petitioner, Marty Gelfand, the public records requested.
22. Petitioner, Marty Gelfand, says as a direct and proximate result of Respondent, Myron Pakush's, refusal to comply with a lawful public records request Respondent, Myron Pakush, breached his duty pursuant to Ohio Revised Code § 149.43 to facilitate broader access to public records.
23. Petitioner, Marty Gelfand, says as a direct and proximate result of Respondents refusal to comply with a lawful public records request has inhibited debate within the community about the use of taxpayer funds, the efficacy of the project and its potential disruptions, the projects effect

on commerce, the health of our community's people and other areas of public discussion attendant to the effect of this project on North East Ohio.

WHEREFORE Petitioner, Marty Gelfand, prays for a Writ of Mandamus, directing the Respondents to provide Petitioner with the public records requested in writing by the Petitioner, Marty Gelfand, on July 9, 2013, see Exhibit A attached, with statutory damages of One Hundred Dollars for each business day during which the respondents failed to comply with the obligations required pursuant to Ohio Revised Code § 149.43, reasonable attorney fees, court costs and for any other appropriate relief.

Law Office of J. Gary Seewald

A large, stylized handwritten signature in black ink, appearing to read "J. Gary Seewald", is written over a horizontal line.

J. Gary Seewald (0018276)
Hillard Building, 3rd Floor
1419 West 9th Street
Cleveland, Ohio 44113
Telephone: (216) 781-8288
Facsimile: (216) 781-1273
Email: jngllwyr@apk.net

CITY OF SOUTH EUCLID



July 9, 2013

Mr. Myron Pakush
Director, District 12
Ohio Department of Transportation
5500 Transportation Boulevard
Garfield Heights, Ohio 44125

Dear Director Pakush:

Thank you so much for meeting with me last week about the proposed Opportunity Corridor. I appreciate your willingness to spend the time and have your consultant make the presentation bringing me up to date on the progress the Ohio Department of Transportation (ODOT) has made on the Draft Environmental Impact Study (DEIS) of the proposed connection from Interstate 490 to East 105th Street between Chester Avenue and the Martin Luther King Parkway near University Circle.

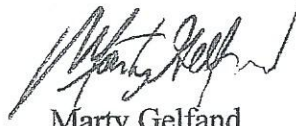
I also appreciate your taking the time to hear more about my proposal for an Interstate 90 Business Bypass. As we discussed, an I-90 Business Bypass would connect I-490 with I-90 at 2 junctions: at East 55th Street and at Eddy Road. It would make use of 3 business corridors which already exist: East 55th Street between I-490 and I-90; Woodland Avenue between East 55th Street and Woodhill Avenue; and East 105th Street between Quincy Avenue and I-90.

As a result of our discussion, I believe that we have found several areas of common ground. First, I think we agree that all three of the business corridors mentioned above would benefit greatly from our transportation dollars. Although you stated that 2 of those corridors, East 55th and East 105th Streets, fell outside the scope of the proposed Opportunity Corridor, that these corridors can be the focus of future projects. Second, we agreed that Phase One of the Opportunity Corridor, the widening of East 105th Street between Quincy and Chester Avenues, was a good project and worthy of funding as proposed by legislation currently before the Cuyahoga County Council. Third, I was impressed with the link you've proposed between Woodland Avenue and East 105th Street and that this might be the best way to connect traffic between those two points.

I look forward to further dialogue regarding this project and plan to participate in the public meeting you are planning to hold regarding the Opportunity Corridor. In preparation for that meeting, I would like to learn more about why the Woodland Avenue alternative was dropped from further consideration as a route along the Opportunity Corridor. Therefore, I respectfully request access to all comments and any analysis which led you and your consultants toward the decision you made as you approach publication of the DEIS. This request therefore includes all comments on both the Woodland Avenue and the Preferred Alternative between East 55th Street and the Woodland-105 connection, and analysis which led to ODOT's conclusion on the DEIS.

Lastly, as a public official who has studied this matter, I reiterate my request for a copy of the DEIS when it is available to the public. I hope you will accommodate this request. Thank you for spending the time you have on discussing this important regional matter. I appreciate your continued interest in reaching out to the public and their elected representatives. Please include me on your contact list for this matter and please feel to contact me at any time regarding this.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Gelfand", with a stylized flourish at the end.

Marty Gelfand
Councilman at-Large



OHIO DEPARTMENT OF TRANSPORTATION

DISTRICT 12 • 5500 TRANSPORTATION BLVD • GARFIELD HEIGHTS, OH 44125 • (216) 581-2100
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR • MYRON S. PAKUSH, DISTRICT DEPUTY DIRECTOR

August 13, 2013

Marty Gelfand, Councilman at-Large
City of Euclid
1349 South Green Road
South Euclid, Ohio 44121

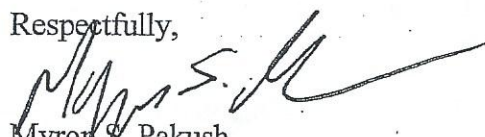
Re: Opportunity Corridor Request

Dear Mr. Gelfand,

I am in receipt of your letter dated July 9, 2013, requesting access to information of the Draft Environmental Impact Study (DEIS) for the Opportunity Corridor.

As discussed on the phone, we will provide that information after we receive FHWA's approval of the document. Once the document is approved, there will be an opportunity for public comments. At that time, we will be able to respond to your questions and concerns.

Respectfully,


Myron S. Pakush,
Ohio Department of Transportation
Deputy Director

STATE OF OHIO

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)SS.

AFFIDAVIT

COUNTY OF CUYAHOGA

)

Marty Gelfand, being first duly sworn, deposes and says that he is the Plaintiff in the case captioned Gelfand vs. State of Ohio, a mandamus action brought pursuant Ohio Revised Code § 149.43.

Affiant further sayeth he is a resident and citizen of the State of Ohio, Cuyahoga County, and the City of South Euclid, where affiant serves as an elected Councilman at-Large.

Affiant further sayeth he is a life-long resident of the east side of Cleveland and Cleveland's inner-ring eastern suburbs.

Affiant further sayeth he has studied the plans to build a road connecting Interstate 490, near Downtown Cleveland at East 55th Street, with University Circle and the Cleveland Clinic, which the Ohio Department of Transportation (ODOT) calls the "Opportunity Corridor."

Affiant further sayeth he believes this project is of general interest to the Greater Cleveland community.

Affiant further sayeth he has known about Opportunity Corridor for several years.

Affiant further sayeth he not been aware that public meetings were being held recently.

Affiant further sayeth he became aware of new funding for Opportunity Corridor when an article about it appeared in the Plain Dealer on June 3, 2013.

Affiant further sayeth he wrote a letter to the Plain Dealer suggesting an alternative which I called the "I-90 Business Bypass" which would connect I-490 with I-90 at two junctions: East 55th Street and Eddy Road.

Affiant further sayeth he believes that an I-90 Business Bypass would improve East 55th Street, Woodland Avenue, and East 105th Street to make it possible for Downtown traffic to use existing routes to connect I-490 with University Circle.

Affiant further sayeth he believes that an I-90 Business Bypass would provide for economic development in existing urban neighborhoods throughout Cleveland's east side.

Affiant further sayeth he believes that an I-90 Business Bypass is a better alternative to ODOT's Opportunity Corridor which would require building a new road.

Affiant further sayeth his letter was published in the Plain Dealer online on June 7, 2013, and in print on June 10, 2013 with the headline "A Business Bypass would outshine Opportunity Corridor"

Affiant further sayeth his letter was well received by people he had since come into contact with and that it has accumulated 82 Facebook "likes."



Affiant further sayeth he called ODOT District 12 Director Myron Pakush to request a meeting to discuss his alternative.

Affiant further sayeth he scheduled a meeting with Defendant Pakush for July 3, 2013.

Affiant further sayeth he and Defendant Pakush met at the ODOT District 12 office in Garfield Heights on July 3, 2013.

Affiant further sayeth Mr. Pakush and his consultant showed him a power point presentation about the Opportunity Corridor.

Affiant further sayeth he learned at that meeting that ODOT studied several other alternatives in addition to the Opportunity Corridor.

Affiant further sayeth he also learned that the additional alternatives were presented at certain public meetings which Defendant Pakush said were held.

Affiant further sayeth he learned at the July 3 meeting that one of the alternatives Defendant Pakush said was studied and rejected was a route which would use Woodland Avenue to connect with University Circle and the Cleveland Clinic.

Affiant further sayeth he wanted to know more about ODOT's proposed use of Woodland and why it was rejected.

Affiant further sayeth he learned from Defendant Pakush that it was rejected because the public comments arising from the public meetings he said were held were negative about Woodland.

Affiant further sayeth he verbally asked Mr. Pakush for those comments and any analysis which were used to reject the Woodland alternative.

Affiant further sayeth Defendant Pakush told affiant that it was late in the game to start changing preferred alternatives and that he was waiting for the Federal Highway Administration (FHWA) to give ODOT approval on the preferred Opportunity Corridor alternative.

Affiant further sayeth Defendant Pakush told affiant that ODOT would publish a Draft Environmental Impact Study (DEIS) upon approval of the preferred alternative from the FHWA.

Affiant further sayeth Defendant Pakush told affiant that upon approval from the FHWA, Defendant would schedule a public meeting to present ODOT's preferred alternative as well as other alternatives which were studied and rejected.

Affiant further sayeth Defendant Pakush would provide affiant a link to a website where the DEIS could be reviewed by affiant and any other member of the public.



Affiant further sayeth he told Defendant Pakush that affiant still wanted the documents notwithstanding a federal agency approving the ODOT preferred alternative.

Affiant further sayeth he told Defendant Pakush he would put my request in writing.

Affiant further sayeth he wrote a letter to Defendant Pakush on July 9, 2013, reiterating his request for the ODOT documents.

Affiant further sayeth he "respectfully request[ed] access to all comments and any analysis which led you and your consultants toward the decision you made as you approach publication of the DEIS. This request therefore includes all comments on both the Woodland Avenue and the Preferred Alternative between East 55th Street and the Woodland-105 connection, and analysis which led to ODOT's conclusion on the DEIS" in affiant's July 9 letter.

Affiant further sayeth he hand delivered the July 9 letter to the office of Defendant Pakush on July 9, 2013, to the hand of Defendant Pakush's assistant Christine Rosa.

Affiant further sayeth he called Defendant Pakush on the telephone after delivering the July 9 letter to ask the status of the response.

Affiant further sayeth he was told by Defendant Pakush on the phone that Defendant ODOT was working on getting affiant an answer.

Affiant further sayeth he received a letter on August 16, 2013 at South Euclid City Hall, signed and dated August 13, 2013, by Defendant Pakush.


Affiant further sayeth Defendant Pakush rejected affiant's request for public documents, saying, "we will provide that information after we receive FHWA's approval of the document. Once the document is approved, there will be an opportunity for public comments. At that time, we will be able to respond to your questions and concerns."

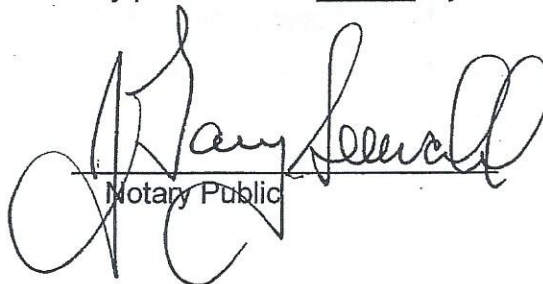
Affiant further sayeth he has not yet received the requested documents.

Affiant further sayeth he has no adequate remedy at law.

FURTHER AFFIANT SAYETH NAUGHT.


Marty Gelfand

 SWORN TO BEFORE ME and subscribed in my presence this 12 day of Sept, 2013.


Notary Public